HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 985 (M/s) OF 2006

1. Ashim Aggarwal S/o Sri B.N. Aggarwal
2. Smt. Kausalya Devi W/o S. Venkat Rao
3. Smt. Pushpa Rau W/o Dr. S. Rao

Through their Power of Attorney holder Sri Bobby Soin, S/o Sri K.K. Soin R/o 212, Rajpur Road, Dehradun & others

.....Petitioners

Versus

1. A.D.J./VI F.T.C., Dehradun.
2. Ramesh Berry S/o Sri R.S. Berry, R/o 59, Kanwali Road, Dehradun. ...Respondents

Sri Gopal Narain, Counsel for the petitioner
Standing Counsel for the respondent No.1.

31.07.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Gopal Narain, Counsel for the petitioner and Standing Counsel for the respondent No.1.

2. By the present writ petition, the petitioners have prayed for a writ of certiorari quashing the order dated 19.07.2006 passed by he respondent no.1 annexed as annexure No.1 to the writ petition.

3. Briefly stated, according the case of the petitioners, the respondent no.2/plaintiff filed a suit being Original Suit No. 729 of 1992 for permanent prohibitory injunction restraining the defendants/petitioners from interfering in possession of the respondent no.2/plaintiff over the property in suit.

4. The petitioners/defendants through the power of attorney holder Bobby Soin filed their written statement

before the trial Court denying the right, title and possession of the plaintiff over the property in suit.

5. During the pendency of the suit, plaintiff preferred a replication before the trial court.

6. During the pendency of the suit, the petitioners vide sale deed dated 31.03.2004 sold the property in dispute in favour of one Sri Sanjay Soin, S/o Sri K.K. Soin R/o 212, Rajpur Road, Dehradun.

7. In view of the above, the petitioners/defendants moved an amendment application in the written statement, which was opposed by the plaintiff/respondent no. 2 by filing an objection/reply to the amendment application.

8. Trial Court vide judgment and order dated 19.07.2006 rejected the petitioners/defendants' amendment application on the ground that the sale deed was executed on 31.03.2004, amendment application was moved on 10.10.2005, therefore, due to a long delay in moving the amendment application, the same cannot be allowed. The relevant portion is quoted below:-

> "वास्तव में प्रतिवादीगण को इस आशय के संशोधन की आवश्यकता नहीं थी, वे तो केवल विक्रय पत्रकी प्रति ही दाखिल कर यह कह सकते थे कि उन्होने विवादित सम्पत्ति को संजय सोईन को बेच दिया है। इसके पश्चात वादी जो उचित समझता वह कार्यवाही करता। दौरान वाद किये गये विक्रय पत्र का क्या प्रभाव होगा, इसके सम्बन्ध में कोई मत अभिव्यक्त करना उचित नहीं होगा।"

9. In view of the aforesaid, the observations made by Presiding Officer, it will be open for the plaintiff to file a copy of the sale deed along with the affidavit which shall be taken on record and thereafter, the Presiding Officer shall dispose of the matter within a period of six weeks from the date of production of the certified copy of this order in accordance with Law.

10. Subject to the aforesaid observations, writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

31.07.2006
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